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NO. 82-718

In the Supreme Court of the United States

OCTOBER TERM, 1982

JUBA C. BELL,

Plaintiff-Respondent

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE, A/K/A STATE FARM FIRE AND CASUALTY COMPANY

Defendant-Petitioner

REPLY BRIEF BY PLAINTIFF-RESPONDENT

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PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the United States District Court were:

Juba C. Bell,

Plaintiff

State Farm Mutual Automobile Insurance Company, a/k/a State Farm Fire and Casualty Company,

Defendant

Lizene Byoune, Jr.,

Defendant

Nita Bell,

Defendant in Cross-Claim

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STATEMENT OF THE ISSUES

I. Whether Louisiana law or Florida law should govern the uninsured motorist policy which is the basis of this litigation.

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition in Court Below

Plaintiff-respondent adopts the Course of Proceedings in defendant-petitioner's original brief.

II. Statement of Facts

Plaintiff-respondent adopts the State of Facts in defendant-petitioner's original brief, adding only that it has been stipulated by all parties that the damages sustained by plaintiff-respondent are in excess of the $10,000 in coverage remaining.

SUMMARY OF ARGUMENT

The District Court and Appeals Court were correct in their findings that Louisiana law should be utilized to determine the choice of law, and that under the "interest analysis" theory which is used in Louisiana, this policy of uninsured motorist coverage must be interpreted under the law of Louisiana, and particularly LSA-R.S. 27:1406 (D)(2)(b), so that the defendant-petitioner is indebted unto plaintiff-respondent for its policy limits plus applicable interest. This is because Louisiana has the most significant contacts with the cause of action.

ARGUMENT

In this, as all diversity cases, the federal courts are bound to follow Louisiana's method of determining choice of law. Klaxon vs. Stentor Electric Manufacturing Co., 313 U.S. 487 (1941); Erie R.R. Co. vs. Tompkins, 304 U.S. 64 (1938).

In Jagers vs. Royal Indemnity Co., 276 So. 2d 309 (1973), the Louisiana Supreme Court abandoned the lex loci contractus espoused in Deane va. McGee, 261 So. 2d 669 (1972) in favor of the more modern "interest analysis" theory. See Lee vs. Hunt, 631 F. 2d 1171 (5th Cir. 1980); Cooper vs. American Express Company, 593 F. 2d 612, 613 (5th Cir. 1979); Brinkley & West, Inc. vs. Foremost Insurance Co., 499 F. 2d 928 (5th Cir. 1974); Brawner vs. Kaufman, 496 F. Supp. 961 (E.D. La. 1980); Highland Insurance Co. vs. Employers Surplus Lines, 487 F. Supp. 169 (E.D. La. 1980); Southern

Insurance Company vs. Consumer Insurance Agency, 442 F. Supp. 30 (E.D. La. 1977); Ardoyno vs. Kyzar, 426 F. Supp. 78 (E.D. La. 1976); Wickham vs. Prudential Insurance Company of America, 366. So. 2d 951, 954 (La. App. 1st Cir. 1978); Hobbs vs. Fireman's Fund American Insurance Companies, 339 So. 2d 28, 37 (La. App. 3rd Cir. 1976); Sutton vs. Langley, 330 So. 2d 321, 326-372 (La. App. 2nd Cir. 1976) writ denied 332 So. 2d 805. See also L.L.R. at p. 760 fn. 61.

The facts of Sutton, infra, are strikingly similar to the case at bar. The court there held that Louisiana law would apply to the interpretation of an uninsured motorist plicy issued in Texas to a Texas citizen, in an accident involving injuries to another Texas citizen. This was because the accident occurred in Louisiana and Louisiana had a greater interest in

the outcome of the suit as to the uninsured motorist coverage. The court reasoned that Texas had a minimal interest especially in light of the fact that in our mobile society, the insurer would have had to contemplate the insured driving out of state and having the uninsured motorist policy subject to different interpretations. In Sutton, writs of certiorari and review were applied for three times, and each time the Louisiana Supreme Court denied writs saying that there was no error in the court of appeal decision. See 132 So. 2d 805 (La. 1976); 332 So. 2d 820 (La. 1976); and 333 So. 2d 242 (La. 1976).

The Trial Court, after careful deliberation over the different considerations involved in the interest analysis, found that Louisiana was the state with the most significant contacts to this action, and accordingly, its law must prevail. This

decision was reached after considering Sprow vs. Hartford Insurance Company, 594 F. 2d 418 (5th Cir. 1979), a case cited by defendant.

Defendant has not alleged that the Trial Court erred in finding Louisiana's interest prevalent. Rather, defendant is insisting that Louisiana law does not provide for the "interest analysis." In so doing, defendant has cited several cases. The first is Deane vs. McGee, infra, which has been effectively overruled by Jagers. Also cited are Sprow, infra, Shockley vs. Sallows, 615 F. 2d 418 (5th Cir. 1979); and Powell vs. Warner, 398 So. 2d 22 (La. App. 4th Cir. 1981). The federal cases overlook the overwhelming mandate of Jagers and its progeny and apply the lex loci contractus rule of Deane vs. McGee. Powell vs. Warner, supra, acknowledges that Jagers is the correct Louisiana approach to conflicts of law but holds

that it was not necessary to choose an applicable law under the facts of that case (Powell at p. 24). Judge Hunter, the trial judge, held that this case did involve a choice of law question, and correctly used the interest analysis.

The petitioner has argued that Louisiana Code of Civil Procedure Article 10 should apply, and, accordingly, Florida law should be invoked. However, as Judge Tate noted in the Fifth Circuit opinion, the article also provides that "the effect of acts passed in one country to have the effect in another country, is regulated by the laws of the country were such acts are to have effect." Judge Tate further noted that "In the case of an insurance policy issued in one state on an automobile that within reasonable intention will be operated in interstate travel, the law of the forum state in which an accident occurs may be deemed to be the state in which the

policy was intended to have effect and to have the most significant relationship in determining the application of a standard automobile liability policy, Deane vs. McGee, supra 260 So. 2d at 674 (concurring opinion), particularly where the vehicle is principally located in such other state. Restatement of Conflict of Laws 2d, Sections 6, 193 (1971)." (See petitioner's appendix at p. A-4 & A-5).

The application of Louisiana substantial law in order to interpret an insurance contract issued in Florida is not violative of the United States Constitution. Allstate Insurance Company vs. Hague, 449 U.S. 302 (1980).

CONCLUSION

For the reasons set forth above, plaintiff-respondent, Juba C. Bell, submits that the decision of the Trial Court and the Court of Appeals should be affirmed.

Respectfully submitted,

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CERTIFICATE

I hereby certify that a copy of the above and foregoing brief has been served upon Mr. DeWitt Methvin, Jr., of Gist, Methvin, Hughes & Munsterman, P. O. Box 1871, Alexandria, Louisiana, 71301, attorney for defendant-petitioner, by depositing same in the U. S. mail, proper postage affixed, this 24th day of November, 1982.

ORIGINAL SIGNED BY
ROBERT B. NEBLETT

ROBERT B. NEBLETT

STATE OF LOUISIANA

PARISH OF RAPIDES

CERTIFICATE

I hereby certify that 40 copies of the above and foregoing brief has been served upon Mr. Francis J. Lorson, Chief Deputy Clerk, Supreme Court of the United States, Office of the Clerk, Washington, D.C. 20543, by depositing same in the U.S. Mail, proper postage affixed, this 24th day of November, 1982.

ORIGINAL SIGNED BY
ROBERT B. NEBLETT

ROBERT B. NEBLETT

Thus done and signed before me, Notary, this 24th day of November, 1982.

NOTARY PUBLIC